

VERNON J. NELL

IBLA 82-914

Decided August 12, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void, I MC 42238 through I MC 42240.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The mailing of a proof of labor to the Bureau of Land Management prior to the

due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

APPEARANCES: Vernon J. Nell, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

V. J. Nell appeals the May 7, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Saddle #1, #2, and #3 lode mining claims, I MC 42238 through I MC 42240, abandoned and void because no proof of labor was filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The 1981 proof of labor was received by BLM December 31, 1981.

Appellant argues that only 1 day late should not receive such harsh treatment.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim to file a copy of the evidence of assessment work performed on the claim or a notice of intention to hold the claim prior to December 31 of each calendar year both in the county where the location notice is recorded and with BLM. The statute also provides that failure to file such instrument within the time period prescribed shall be deemed conclusively to constitute an abandonment of the claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements are repeated in 43 CFR 3833.2 and 3833.4(a). The requirement to file both in the county and BLM are mandatory, not discretionary. Compliance with one does not constitute compliance with the other. Enterprise Mines, Inc., 58 IBLA 372 (1981). Failure to comply timely is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the timely recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] The mailing of the evidence of assessment work prior to the due date is not sufficient to comply with the requirements of the statute unless the document is actually received by the proper BLM office on or before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filing. Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

